

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-160283
	:	TRIAL NO. B-1505279A
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
TIMOTHY WHITE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.1.

Two complaints were filed in Hamilton County Juvenile Court alleging that defendant-appellant Timothy White was a delinquent child for committing acts that if committed by an adult would have constituted aggravated robbery under R.C. 2911.01 (A)(1) and felonious assault under R.C. 2903.11(A)(1), both with accompanying firearm specifications. The state filed a motion asking the juvenile court to relinquish jurisdiction to the common pleas court and try White as an adult. The juvenile court found that probable cause existed that White had committed the offenses and that he was not amenable to treatment in the juvenile court system. Therefore, it granted the state's motion and bound White over to the common pleas court to be tried as an adult.

White was indicted on the same charges. In the common pleas court, he pleaded guilty to aggravated robbery, with the accompanying firearm specification,

and felonious assault. The court sentenced him to a total of eight years' incarceration, and this appeal followed.

In his sole assignment of error, White contends that the juvenile court abused its discretion and violated his right to due process when it determined that he was not amenable to treatment in the juvenile system and bound him over to the common pleas court. He argues that the juvenile court failed to consider the mitigating statutory factors, and instead followed a bright-line rule that a 15-year-old child who commits offenses with a firearm is not amenable to treatment. This assignment of error is not well taken.

First, the state argues that White did not object to the bindover decision in either the juvenile court or the court of common pleas, and, therefore, a plain-error standard applies. It relies on *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, in which the Ohio Supreme Court held that the defendant forfeited his right to bring a constitutional challenge to the mandatory-bindover procedure by failing to raise the issue in the juvenile court or the common pleas court. *Id.* at ¶ 2.

Quarterman does not control in this case, because White does not raise a facial constitutional challenge to the bindover statutes. See *State v. Marshall*, 1st Dist. Hamilton No. C-150383, 2016-Ohio-3184, ¶ 10; *State v. Amos*, 1st Dist. Hamilton No. C-150265, 2016-Ohio-1319, ¶ 26. Further, it is true that White did not object to the bindover decision in the common pleas court. But this court has held that because a juvenile court's order transferring jurisdiction to the common pleas court is not a final, appealable order, and the defendant can only appeal following his conviction in the general division, the defendant properly preserves the error by

raising his objection at the time he is bound over. *Amos* at ¶ 26-27; *State v. McKinney*, 1st Dist. Hamilton Nos. C-140743 and C-140744, 2015-Ohio-4398, ¶ 8. Though White did not specifically use the word “object,” the record is clear that he contested the state’s motion to relinquish jurisdiction, and, therefore, did not forfeit the issue. *See State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 21.

R.C. 2152.12(B) governs discretionary bindovers. It permits the juvenile court to transfer to the common pleas court a case alleging a juvenile has committed an act that would be a felony if committed by an adult if the juvenile court finds that (1) at the time of the offense, the juvenile was 14 or older, (2) probable cause exists that the juvenile committed the act charged, and (3) the juvenile is not amenable to care or rehabilitation in the juvenile system. *McKinney* at ¶ 34. Because it is highly individualized and inherently fact-based, a juvenile court’s amenability determination is reviewed under an abuse-of-discretion standard. *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 14; *McKinney* at ¶ 34.

When determining if a child is amenable to treatment in the juvenile system, the juvenile court must consider the factors weighing in favor of and against transfer set forth in R.C. 2152.12(D) and (E), as well as any other relevant factor. *Marshall* at ¶ 14. The court has discretion to determine how much weight to give to any one factor, and it need only identify those factors that were applicable and that it weighed in making its determination. *Id.* at ¶ 15; *Amos* at ¶ 38. “As long as the court considers the appropriate statutory factors and there is some rational basis in the record to support the court’s findings when applying those factors, [this court] cannot conclude that the trial court abused its discretion in deciding whether to

transfer jurisdiction.” *Marshall* at ¶ 15, quoting *State v. West*, 167 Ohio App.3d 598, 2006-Ohio-3518, 856 N.E.2d 285, ¶ 10 (4th Dist.).

In this case, the juvenile court did not follow a bright-line rule that juveniles who commit crimes with firearms are not amenable to treatment. White takes that statement out of context of the court’s other remarks. The record shows that the juvenile court considered the statutory factors. It noted that the victim suffered physical harm, the crime had been committed as part of organized criminal activity, White had possessed a firearm, he had been under a community-control sanction at the time of the offense, the results of previous programs in the juvenile system indicated that rehabilitation was not possible in the juvenile system, and there was not sufficient time for rehabilitation in the juvenile system. All of these findings were supported by the record.

White contends that the juvenile court ignored certain factors weighing against a transfer to the adult system. But while the court did not specifically address those factors, it indicated that it had considered the psychological report and other reports presented to the court. The psychological report discussed White’s untreated mental-health issues and concluded that White was amenable to rehabilitation in the juvenile system. But the juvenile court is entitled to disagree with the opinion of a medical expert and may take into account the severity of the offenses. *Marshall*, 1st Dist. Hamilton No. C-150383, 2016-Ohio-3184, at ¶ 21.

Under the circumstances, we cannot hold that the trial court’s decision was so arbitrary, unreasonable or unconscionable as to connote an abuse of discretion. *See State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, 840 N.E.2d 1032, ¶ 130.

Consequently, we overrule White's assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on March 3, 2017
per order of the court _____.
Presiding Judge